

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS**

IN RE: PHARMACEUTICAL INDUSTRY AVERAGE WHOLESALE PRICE LITIGATION	MDL No. 1456 Master File No. 01-CV-12257-PBS
THIS DOCUMENT RELATES TO: <i>The State of Florida, ex rel. Ven-A-Care of the Florida Keys, Inc. v. Alpharma, Inc., et al., C.A. No. 05-CV-11795-PBS</i>	Judge Patti B. Saris

**BRIEF OF *AMICI CURIAE* IN OPPOSITION TO MOTION
FOR RECONSIDERATION OF JANUARY 13, 2006 ELECTRONIC
ORDER AND INCORPORATED MEMORANDUM OF LAW**

Mylan Laboratories Inc., Mylan Pharmaceuticals Inc., Novopharm, Ltd., Teva Pharmaceutical Industries Ltd., Teva Pharmaceutical USA, Watson Pharmaceuticals, Inc., and its subsidiary Schein Pharmaceutical, Inc. (now known as Watson Pharma, Inc.) (collectively, the “Mylan Defendants”),¹ defendants in the action entitled *The State of Florida, ex rel. Ven-A-Care of the Florida Keys, Inc. v. Mylan Laboratories Inc., et al.*, C.A. No. 05-CV-490, currently pending in the United States District Court for the Northern District of Florida (the “Mylan action”), hereby submit this brief as *amici curiae* in opposition to the motion by the State of Florida and Ven-A-Care of the Florida Keys, Inc. (collectively, the “Plaintiffs”) for reconsideration of this Court’s January 13, 2006 electronic order denying the Plaintiffs’ motion to participate in the January 27, 2006 hearing regarding their motion to remand *The State of Florida, ex rel. Ven-A-Care of the Florida Keys, Inc. v. Alpharma, Inc., et al.*, C.A. No. 05-CV-11795-PBS (the “Alpharma action”) to state court.

Respectfully, the *Mylan* Defendants did not, as the Plaintiffs contend, present “incomplete and misleading information about whether a transfer was ‘imminent’ in” the *Mylan*

¹ Novopharm, Ltd. and Teva Pharmaceutical Industries, Ltd. join in this brief of *amici curiae* in opposition only for the limited purposes of this motion, and do not concede that the court has personal jurisdiction over them.

action. *See* Plaintiffs' Motion for Reconsideration, at 1. The *Mylan* Defendants wish to inform this Court that the Judicial Panel on Multidistrict Litigation, by Conditional Transfer Order dated January 11, 2006 (the "Conditional Transfer Order"), has conditionally transferred the *Mylan* action to this Court for consolidated and coordinated pretrial proceedings in *In Re: Pharmaceutical Industry Average Wholesale Price Litigation*, MDL No. 1456 (the "AWP MDL"). A copy of the Conditional Transfer Order is attached hereto as Exhibit A.

Therefore, the only factor that will delay the transfer of the *Mylan* action to the AWP MDL is if the Plaintiffs file an objection to the Conditional Transfer Order, which the Plaintiffs have represented they intend to do. *See* State of Florida and Relator, Ven-A-Care of the Florida Keys' Memorandum in Opposition to Motion of the *Mylan* Defendants To Participate As Amici Curiae and To Stay the *Alpharma* Litigation, dated January 13, 2006, at 8-9.

The Plaintiffs also appear to seek to argue the merits of their remand motion in their motion for reconsideration. *See* Plaintiffs' Motion for Reconsideration, at 2-5. In accordance with an order entered yesterday by the United States District Court for the Northern District of Florida in the *Mylan* action, the *Mylan* Defendants have until January 25, 2006 to file their opposition to the Plaintiffs' motion to remand. The Plaintiffs' motion for reconsideration should not serve to truncate the period within which the *Mylan* Defendants have to file such opposition.

The *Mylan* Defendants thus respectfully request that this Court deny the Plaintiffs' motion for reconsideration of this Court's January 13, 2006 electronic order denying the Plaintiffs' motion to participate in the January 27, 2006 hearing regarding their motion to remand the *Alpharma* action to state court. The defendants in the *Alpharma* action concur in this request.²

² The defendants in the *Alpharma* action are Alpharma, Inc., Alpharma USPD, Inc. (f/k/a Barre-National, Inc.), Barre Parent Corporation, Faulding, Inc., Ivax Corporation, Ivax Pharmaceuticals, Inc. (f/k/a Zenith-Goldline

Dated: January 19, 2006

Respectfully submitted,

ON BEHALF OF DEFENDANTS LISTED BELOW

/s/ Louis J. Scerra, Jr.

Gary R. Greenberg (BBO #209420)

Louis J. Scerra, Jr. (BBO #543600)

Jonathan D. Cohen (BBO #600081)

James M. Vant (BBO #653616)

Greenberg Traurig, LLP

One International Place

Boston, MA 02110

Telephone: (617) 310-6000

Facsimile: (617) 310-6001

*Attorneys for Defendants Mylan Laboratories Inc.
and Mylan Pharmaceuticals Inc.*

T. Reed Stephens
Elizabeth I. Hack
Sonnenschein Nath & Rosenthal LLP
1301 K Street, N.W.
Suite 600, East Tower
Washington, DC 20005

*Attorneys for Defendants Novopharm, Ltd.,
Teva Pharmaceutical Industries, Ltd., and
Teva Pharmaceutical USA*

Douglas B. Farquhar
Michelle L. Butler
Hyman, Phelps & McNamara, P.C.
700 Thirteenth Street, N.W.
Suite 1200
Washington, D.C. 20005

*Attorneys for Defendants Watson
Pharmaceuticals, Inc. and Schein
Pharmaceuticals (n/k/a Watson Pharma, Inc.)*

CERTIFICATE OF SERVICE

I, Louis J. Scerra, Jr., hereby certify that on January 19, 2006 I caused a true and correct copy of the foregoing, Brief of *Amici Curiae* In Opposition to Motion for Reconsideration of January 13, 2006 Electronic Order and Incorporated Memorandum of Law, to be served on all counsel of record by electronic service pursuant to Case Management Order No. 2 in MDL No. 1456.

/s/ Louis J. Scerra, Jr.

Louis J. Scerra, Jr.